

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RONALD ROBERTSON,

Case No. 07-1428-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying his application for a period of disability and disability insurance benefits.

The administrative law judge (ALJ) stated sufficient reasons supported by substantial evidence to reject the testimony of plaintiff and his wife, and the opinions of treating physicians Drs. Kho and Morningstar, that plaintiff is disabled by cognitive deficits and/or side effects of his anti-seizure medication.¹

¹The ALJ could properly reject plaintiff's testimony by stating clear and convincing reasons supported by substantial evidence. The ALJ could reject the testimony of plaintiff's wife by stating reasons, supported by substantial evidence, germane to the witness. The ALJ could reject the treating physicians'

While medical records of examinations by Drs. Kho and Morningstar evince plaintiff's subjective complaints of sleepiness and drowsiness, they do not, as the ALJ noted, evince observations of such symptoms. (Tr. 20-21, 199-206, 207-18, 221-27, 232). In his report of neuropsychological testing, Dr. Kauder observed that plaintiff "appeared to have a syndrome of weakness, tiredness, and easy fatigability." (Tr. 135). Nevertheless, plaintiff completed testing Dr. Kauder estimated would take 9 to 11 hours, and Dr. Kauder concluded, based on plaintiff's "current level of functioning," that plaintiff "should be able to handle all of his affairs and engage in a full range of ADLs independently without undue risk or concern[,]" and "should be able to resume working in capacities similar to his prior levels of employment." (Tr. 136). The ALJ noted that whereas plaintiff and his wife and treating physicians agree that plaintiff sleeps up to fourteen hours per day and needs to nap, plaintiff reported reduced sleep to Dr. Kauder while on the same medications he alleges make him too drowsy to work. (Tr. 20-21, 129).

The ALJ properly considered that plaintiff engaged in substantial gainful activity well after his alleged onset date. Although plaintiff testified that his condition gradually worsened, the ALJ did not have to accept that testimony, which is

opinions, which are contracted by consulting physicians, by stating specific, legitimate reasons supported by substantial evidence.

not supported by objective medical evidence. The ALJ properly considered reports in the medical evidence that plaintiff was very active, performed chores and yardwork, and felt pain in his hip while running at softball practice. (Tr. 21, 211-12). Plaintiff emphasizes that he played softball only once for one half hour, that he shouldn't have done so, and that he is not on a softball team. The ALJ did find to the contrary.

The ALJ properly noted that Dr. Morningstar's opinion that plaintiff's mental deficits are probably disabling is not supported in any fashion by Dr. Kauder's report, upon which Dr. Morningstar relied. (Tr. 19). Dr. Kauder's testing revealed only a mild amnestic disorder. (Tr. 136). As noted, Dr. Kauder found that plaintiff should resume working. Id. The ALJ also properly considered the determinations of state agency psychologists that plaintiff has no more than mild functional difficulties from mental impairment. (Tr. 19, 155-69, 178-92).

Dr. Kho's April 2007 letter opinion to the Appeals Council is consistent with his June 2004 letter opinion and does not disclose additional facts. The Appeals Council properly declined to remand the matter to the ALJ to consider the letter.

Plaintiff fails to demonstrate that the decision of the
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Commissioner is not based on substantial evidence or results from legal error.

Conclusion

Based on the foregoing, the decision of the Commissioner is affirmed.

IT IS SO ORDERED.

DATED this 17th day of November, 2008.

s/ Michael R. Hogan
United States District Judge